SUPREME COURT, U. S.

No. 73-366

FILED

OCT 30 1973

MICHAEL RODAK, JR., CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1973

BURTON SANFORD WOLCOFF, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

ROBERT H. BORK,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

In the Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-366

BURTON SANFORD WOLCOFF, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioners contend that the evidence was insufficient to establish a conspiracy and that venue was improper.

After a jury trial in the United States District Court for the Northern District of Illinois, petitioners Burton and Robert Wolcoff, inmates of the federal penitentiary at Terre Haute, Indiana, were convicted of conspiring to defraud the government of the faithful services of Rabbi Bernard M. Cohen, an officer of the United States (Rabbi Cohen was a prison chaplain), in violation of 18 U.S.C. 371. In addition all three petitioners were convicted of four counts of bribing the chaplain, in violation of 18 U.S.C. 201(b)(3). Burton was sentenced to three years' imprisonment; all but six months and one day were suspended, and

he was placed on probation for the balance of the term. Robert and Doree received three year sentences, which were suspended in favor of probation, and each was fined $2,500. The court of appeals affirmed on July 12, 1973, and denied rehearing on July 27, 1973. The petition for a writ of certiorari was not filed until August 28, 1973, and is therefore out of time under Rule 22(2) of this Court.

In any event, the petition is without merit. Petitioners contend that their convictions are not supported by the evidence because the chaplain, who testified as a government witness, denied that the favors he had done for Burton and Robert were induced by the gratuities he had received (Pet. 7-9). They also maintain that venue in the Northern District of Illinois was not proper. The sufficiency of the evidence contention was fully considered and correctly rejected in the opinion of the court of appeals (see Pet. App. 3-4), upon which we rely. The court of appeals also correctly rejected the contention that venue was improper (see Pet. App. 5); in addition to the telephone calls of which the court took note, payment of the chaplain's hotel bills, which formed the basis for the substantive counts and constituted overt acts of the conspiracy, occurred in the Northern District of Illinois.[1]

---

[1] Petitioners rely upon *United States* v. *Bozza*, 365 F. 2d 206, 221 (C.A. 2), for the proposition that venue did not lie in the district where the hotel bills were paid (Pet. 11). The payment of those bills, however, was not, as in *Bozza*, merely "accessorial acts;" rather, "the crime occurred" when and where the bills were paid.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

OCOBER 1973.